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THE CFPB AT FIVE YEARS: BEYOND THE NUMBERS

KELLY THOMPSON COCHRAN*

I. INTRODUCTION TO THE CFPB

As the Consumer Financial Protection Bureau (“CFPB” or the “Bureau”) has passed its five-year anniversary, the Bureau has amassed an impressive set of numbers measuring some of its impacts on consumers and the financial services marketplace.¹ Other accomplishments may get less attention, but have nonetheless created important infrastructure and partnerships to help leverage and magnify the agency’s effectiveness. This Article briefly summarizes some of the ways in which the Bureau has evolved in its early years to better fulfill its mission and improve the functioning of consumer financial markets.

As detailed in past issues of the *North Carolina Banking Institute Journal*,² the CFPB was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) in the wake of the country’s worst financial crisis since the Great Depression.³

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1. See, e.g., CONSUMER FIN. PROT. BUREAU, CONSUMER FINANCIAL PROTECTION BUREAU: BY THE NUMBERS (July 2016) [hereinafter NUMBERS FACTSHEET], http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/07132016_cfpb_By_the_numbers_factsheet.pdf; see also *infra* Part II.

2. See generally e.g., Melissa Jacoby, *Dodd-Frank, Regulatory Innovation, and the Safety of Consumer Financial Products*, 15 N.C. BANKING INST. 99 (2011); Alex C. Covington, Note, *Fighting Yesterday’s Battles: Proposed Changes to the Consumer Financial Protection Bureau*, 16 N.C. BANKING INST. 299 (2012); Dylan J. Castellino, Note, *A Spotlight on Shadow Banking: The CFPB Finalizes Procedures to Supervise Risky Nonbanks*, 18 N.C. BANKING INST. 333 (2014).

3. Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) §1011, 12 U.S.C § 5491 (2015). More than eight million jobs were lost during the first eighteen months after the crisis. From their pre-crisis peaks, housing prices declined by an average of 30%, retirement savings by 22%, and overall household wealth by \$13 trillion. More than seven million homes entered foreclosure between 2007 and 2010. Eight years after the crisis, monthly foreclosure rates remain volatile as states with substantial

Congress structured the Bureau as an independent entity within the Federal Reserve System to consolidate authorities that had previously been divided across seven federal agencies.⁴ Dodd-Frank also vested the Bureau with additional responsibilities and authorities, including general market monitoring,⁵ a mandate to supervise various types of nonbank providers of consumer financial products and services on an ongoing basis,⁶ and the authority to promulgate regulations under certain existing federal statutes as well as new provisions of Dodd-Frank.⁷

The momentum to create the Bureau grew out of a widespread recognition that regulatory fragmentation had made it substantially more difficult—in the years leading up to the financial crisis—to address the build up of high levels of consumer and systemic risk within mortgage-related markets. In particular, Congress and outside observers recognized that because seven federal agencies had varying roles in consumer financial rulemaking and enforcement, no one agency was able to maintain a broad view of consumer risks across all relevant

inventories continue to work to reduce backlogs. S. REP. NO. 111-176, at 39 (2010); DEP'T OF HOUS. & URBAN DEV., NATIONAL SCORECARD 1 (Nov. 2016), https://portal.hud.gov/hudportal/documents/huddoc?id=Scorecard_2016_11_508C.pdf (reporting 43,352 foreclosure starts and 34,288 foreclosure completions in October 2016, compared with 52,280 and 23,120 pre-crisis monthly averages, respectively).

4. Dodd-Frank § 1011(a), 12 U.S.C. § 5491(a). The agencies were the Board of Governors of the Federal Reserve System ("FRB"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), the National Credit Union Administration ("NCUA"), the Department of Housing and Urban Development, and the Federal Trade Commission. The Dodd-Frank Act abolished the OTS. S. REP. NO. 111-176, at 10–11, 23–26, 178 (2010).

5. Dodd-Frank § 1022(c), 12 U.S.C. § 5512(c); *see also* Dodd-Frank §§ 1024(b)(1), 1025(b)(1), 12 U.S.C. §§ 5514(b)(1), 5515(b)(1) (giving the Bureau the authority to "require reports and conduct examinations").

6. Dodd-Frank § 1024(b), 12 U.S.C. § 5514(b).

7. *See, e.g.*, Dodd-Frank § 1031(b), 12 U.S.C. § 5531(b) (granting the Bureau the authority to prescribe rules to prevent unfair, deceptive, and abusive acts or practices); Dodd-Frank § 1032(a), 12 U.S.C. § 5532(a) (granting the Bureau the authority to prescribe rules to ensure that the features of consumer financial products and services are "fully, accurately, and effectively disclosed to consumers" both initially and over the term of the product or service); Dodd-Frank § 1089(4), 15 U.S.C. § 1692l(d) (granting the Bureau the authority to prescribe rules under the Fair Debt Collections Practices Act ("FDCPA")); Dodd-Frank § 1088(a)(2)(A),(e), 15 U.S.C. § 1681s(e) (granting the Bureau the authority to prescribe rules under most provisions of the Fair Credit Reporting Act ("FCRA")). Prior to the Dodd-Frank Act, other federal financial services regulators had had more limited rulemaking authority with regard to unfair and deceptive acts and practices and certain provisions of the FCRA. No federal agency had had authority to issue general FDCPA regulations.

markets. The fragmentation also encouraged regulatory arbitrage, allowing companies to create a “race to the bottom” in which the institutions with the least effective consumer regulation, supervision, and enforcement attracted more business and put pressure on institutions with more robust oversight to lower standards to compete effectively. Further, the regulatory structure made it more difficult for federal regulators to respond to increasing risk levels, particularly where consumer protection was only one of several agency missions, and where rulemaking and enforcement authority was spread across multiple agencies.⁸

With these concerns in mind, Congress endowed the Bureau with a mission to “implement and . . . enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services” and that such markets are “fair, transparent, and competitive.”⁹ Dodd-Frank sets out five specific agency objectives to advance the interests of both consumers and responsible financial services providers by:

- Providing consumers with timely and understandable information to assist them in making responsible decisions about financial transactions;
- Protecting consumers from unfair, deceptive, or abusive acts and practices and from discrimination;
- Identifying and addressing outdated, unnecessary, or unduly burdensome regulations to reduce unwarranted regulatory burdens;
- Enforcing federal consumer financial law consistently, without regard to the status of a person as a depository institution, to promote

8. See, e.g., S. REP. NO. 111-176, at 10–23, 165, 167–168 (2010) (“The current system of consumer protection suffers from a number of serious structural flaws that undermine its effectiveness, including a lack of focus resulting from conflicting regulatory missions, fragmentation, and regulatory arbitrage.”); Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. OF PA. L. REV. 1, 83–100 (Nov. 2008) (“Effective regulation requires both authority and motivation. Yet none of the many regulators in the consumer credit field satisfies these basic requirements.”).

9. Dodd-Frank § 1021(a), 12 U.S.C. § 5511(a).

- fair competition; and
- Promoting the transparent and efficient operation of markets for consumer financial products and services to facilitate access and innovation.¹⁰

The statute identified the primary functions of the Bureau as supervision and enforcement; direct work with consumers through financial education, as well as through collecting and responding to consumer complaints; market monitoring and research activities; and issuing rules and guidance to implement federal consumer financial law.¹¹

Stand up of the Bureau began immediately after Dodd-Frank was signed into law on July 21, 2010. Staff from several existing agencies transferred to the Bureau ahead of various statutory authorities, including for supervision and rulemaking, vesting there on July 21, 2011, which had been selected by the Secretary of the Treasury as the designated transfer date. Richard Cordray was confirmed by the Senate as the Bureau's first director on July 16, 2013, after having been named as a recess appointment to the position in January 2012. Today, the Bureau employs approximately 1,600 staff in four offices; the single largest division is Supervision, Enforcement, and Fair Lending, which makes up about 45% of the agency's employees.¹²

II. OVERVIEW OF MAJOR FUNCTIONS

The Bureau's work can generally be grouped into three large categories of activity: (1) supervision and enforcement; (2) consumer education, engagement, and complaints; and (3) research, market

10. Dodd-Frank § 1021(b), 12 U.S.C. § 5511(b).

11. Dodd-Frank § 1021(c), 12 U.S.C. § 5511(c).

12. See CONSUMER FIN. PROT. BUREAU, SEMI-ANNUAL REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU 14, 134 (Fall 2016) [hereinafter FALL 2016 SEMI-ANNUAL REPORT], https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/122016_cfpb_SemiAnnualReport.pdf; CONSUMER FIN. PROT. BUREAU, THE CFPB STRATEGIC PLAN, BUDGET, AND PERFORMANCE PLAN AND REPORT 15 (May 2015), http://files.consumerfinance.gov/f/201502_cfpb_report_strategic-plan-budget-and-performance-plan_FY2014-2016.pdf; *Bureau Structure*, CONSUMER FIN. PROT. BUREAU, (last updated Dec. 21, 2016), <http://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/> (providing a general organization chart).

monitoring, and regulations. In each category, the numbers only partially demonstrate the ways in which the Bureau has leveraged its direct work to produce greater impacts on consumers and providers.

A. *Supervision and Enforcement*

The Bureau's supervision and enforcement activity has returned approximately \$12 billion in monetary relief to approximately twenty-seven million consumers over the agency's first five years, including both monetary compensation and principal reductions, cancelled debts, and similar forms of relief.¹³ In addition, more than half a billion dollars has been ordered to be paid in civil penalties as a result of CFPB enforcement work, including the Bureau's largest ever civil monetary penalty—\$100 million—against Wells Fargo in connection with the widespread illegal practice of secretly opening unauthorized deposit and credit card accounts.¹⁴ Other major areas of concentration have included mortgage loan origination and servicing, debt collection practices, and credit card practices, particularly sales of add-on products.¹⁵

While important, these numbers do not provide a full picture of the CFPB's work to build out its supervision and enforcement programs. With regard to supervision, the Bureau has ongoing authority to examine 135 of the nation's largest banks and credit unions representing approximately 80% of the nation's banking market, as well as several thousand non-bank financial services providers.¹⁶ As noted

13. CONSUMER FIN. PROT. BUREAU, CONSUMER FINANCIAL PROTECTION BUREAU: ENFORCING FEDERAL CONSUMER PROTECTION LAWS 1 (July 2016) [hereinafter ENFORCEMENT FACTSHEET], http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/2016-07-13_SEFL_Factsheet_design_final.pdf.

14. *Id.*; Press Release, Consumer Fin. Prot. Bureau, Consumer Financial Protection Bureau Fines Wells Fargo \$100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts (Sept. 8, 2016) [hereinafter CFPB Press Release regarding Wells Fargo], <http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/>.

15. ENFORCEMENT FACTSHEET, *supra* note 13, at 2, 5, 15; For a detailed analysis of 122 cases through the end of calendar year 2015, see Christopher L. Peterson, *Consumer Financial Protection Bureau Law Enforcement: An Empirical Review*, 90 TUL. L. REV. 1057, 1086–87 (2016).

16. ENFORCEMENT FACTSHEET, *supra* note 13, at 2; Steven Antonakes, Deputy Dir., Consumer Fin. Prot. Bureau, Prepared Remarks to the Consumer Bankers Association, (Mar. 25, 2015) [hereinafter Antonakes Prepared Remarks], <http://>

above, the Bureau is the first federal financial regulator to have such authority over nonbanks. Specifically, Dodd-Frank vests the agency with authority to examine: (1) non-depository mortgage lenders and servicers, payday lenders, and private student lenders of all sizes; (2) “larger participants” in other consumer financial services markets as defined by regulation; and (3) individual companies that the Bureau has determined by order are engaged in conduct that poses particular risks to consumers.¹⁷ Since 2012, the Bureau has issued regulations to define larger participant thresholds for and commenced examinations of debt collectors, consumer reporting agencies, student loan servicers, providers of international money transfers, and auto finance companies.¹⁸ It is currently working on a rule to define larger participants within markets for various types of installment loans, as well as considering suggestions, made by both industry groups and consumer advocates, that rules to require registration of these or other non-depository financial services providers would facilitate supervision and provide greater market transparency.¹⁹

The Bureau has organized its examinations around “institutional product lines” to ensure that both depositories and non-depositories are achieving the same compliance standards.²⁰ Specifically, the Bureau begins its prioritization process by ranking the institutional product lines by level of consumer risk, taking into account such factors as market size, the extent to which consumers can “vote with their feet” in

www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-deputy-director-steven-antonakes-to-the-consumer-bankers-association/; *see also* Dodd-Frank § 1024(a)(1), 12 U.S.C. § 5514(a)(1) (providing supervisory authority over various categories of nonbanks); Dodd-Frank § 1025(a)(1), 12 U.S.C. § 5515(a)(1) (providing supervisory authority over insured depositories and credit unions with total assets of \$10 billion and their affiliates).

17. Dodd-Frank § 1024(a)(1), 12 U.S.C. § 5514(a)(1). The Bureau may issue such an order only after providing notice and a reasonable opportunity to respond. Dodd-Frank § 1024(a)(1)(C), 12 U.S.C. § 5514(a)(1)(C); CFPB Service of Notice Rule, 12 C.F.R. § 1091.104 (2016).

18. Defining Larger Participants of Certain Consumer Financial Product and Service Markets, 12 C.F.R. §§ 1090.104–.108 (2016).

19. Kelly Cochran, *Fall 2016 Rulemaking Agenda*, CONSUMER FIN. PROT. BUREAU (Dec. 2, 2016) [hereinafter Cochran, *Fall 2016 Agenda*], <http://www.consumerfinance.gov/about-us/blog/fall-2016-rulemaking-agenda/>.

20. Antonakes Prepared Remarks, *supra* note 16; Lissa Broome et al., *Effective Compliance Risk Management in a Rapidly Changing Regulatory Environment: A Conversation from the Clearing House Annual Conference*, 18 N.C. BANKING INST. 297, 317–18 (2014).

particular markets, and areas of emerging risk. Once product lines have been prioritized, the agency then determines which providers of those products or services should be prioritized for examination, focusing on such factors as size and type of business model.²¹ Where violations are found, the Bureau decides whether to pursue corrective action and remedies through the confidential supervision process or through public enforcement based on a number of factors, including the severity and scope of the harm, the potential value of public deterrence, whether the institution self-identified and self-corrected the violation, and various other policy considerations.²²

Although most supervision activities are confidential, the Bureau has worked to raise awareness of this function by issuing more than a dozen “Supervisory Highlights” reports over the last three years.²³ These publications maintain the anonymity of examined entities while summarizing examinations findings, including violations of law and practices that support compliance, from different types of providers such as mortgage originators and servicers, consumer debt collectors, credit card providers, student loan servicers, auto loan originators and servicers, and consumer reporting agencies. The Bureau is the only federal financial services regulator to publish this sort of update on a regular basis.²⁴ Supervisory Highlights also include general information about the Bureau’s supervisory function, such as information about the Bureau’s approach to prioritization and cumulative relief provided to consumers through confidential examination processes.²⁵ The publications also call attention to cross-cutting concerns that may affect many types of financial services

21. Antonakes Prepared Remarks, *supra* note 16.

22. Antonakes Prepared Remarks, *supra* note 16.

23. See, e.g., CONSUMER FIN. PROT. BUREAU, SUPERVISORY HIGHLIGHTS: FALL 2012 (2012) [hereinafter SUPERVISORY HIGHLIGHTS FALL 2012], http://files.consumerfinance.gov/f/201210_cfpb_supervisory-highlights-fall-2012.pdf; CONSUMER FIN. PROT. BUREAU, SUPERVISORY HIGHLIGHTS: FALL 2016 (2016) [hereinafter SUPERVISORY HIGHLIGHTS: FALL 2016], https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf.

24. The FDIC periodically publishes a document called Supervisory Insights, which includes articles discussing various banking topics and trends of interest, such as cybersecurity and marketplace lending. Where supervisory findings are discussed, they are presented at an aggregate level. See, e.g., FED. DEPOSIT INS. CORP., SUPERVISORY INSIGHTS VOL. 13, ISS. 1 (Summer 2016), https://www.fdic.gov/regulations/examinations/supervisory/insights/sise16/SI_SE2016.pdf.

25. See, e.g., SUPERVISORY HIGHLIGHTS: FALL 2012, *supra* note 23, at 3, 7–14.

providers.²⁶

The Bureau's enforcement authority extends generally to "covered persons" and their "service providers" as defined in Dodd-Frank, with certain exceptions that include most auto dealers and depository institutions with less than \$10 billion in assets.²⁷ Dodd-Frank authorizes the Bureau to bring enforcement actions both in federal court and pursuant to administrative procedures.²⁸ The Bureau has issued regulations to govern various aspects of its enforcement activity, including the exercise of investigative authorities, operation of its Office of Administrative Adjudications, notifications by state officials when seeking to enforce Dodd-Frank or Bureau rules thereunder, and collection of civil money penalties.²⁹ In its first four years, about 25% of the Bureau's public enforcement cases were brought against large banking institutions, with the remainder brought against nonbanks of various sizes.³⁰

In addition to creating offices focusing on supervision and enforcement, the Bureau has also established an Office of Fair Lending and Equal Opportunity as mandated by Dodd-Frank.³¹ That office focuses and coordinates the Bureau's various fair lending activities,

26. See, e.g., SUPERVISORY HIGHLIGHTS: FALL 2016, *supra* note 23, at 3–19, 20–25.

27. Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") §§1024(c), 1025(c), 1026(c), 1027, 1029, 1051–57, 12 U.S.C. §§ 5514(c), 5515(c), 5516(c), 5517, 5519, 5561–5567 (2015); see also Dodd-Frank § 1002(6), (26), 12 U.S.C. § 5481(6), (26) (defining terms). Persons that are regulated by the Securities and Exchange Commission, the Commodity Futures Trade Commission, and state insurance regulators are also generally excluded from the Bureau's jurisdiction. Dodd-Frank also generally excludes accountants, real estate brokers, and certain attorney activities from Bureau authority. Dodd-Frank §1027, 12 U.S.C. § 5517; see also Dodd-Frank §1002 (20)–(22), 12 U.S.C. § 5481 (20)–(22) (defining terms).

28. Dodd-Frank §§ 1053–1054, 12 U.S.C. §§ 5563–5564.

29. CFPB Consumer Financial Civil Money Penalty Rule, 12 C.F.R. pt. 1075 (2016); CFPB Rules Relating to Investigations, 12 C.F.R. pt.1080 (2016); CFPB Rules of Practice for Adjudication Proceedings pt. 1081 (2016); CFPB State Official Notification Rules pt. 1082 (2017).

30. Peterson, *supra* note 15, at 1084. In the Bureau's early years, enforcement cases against large depository institutions made up a higher percentage of the total, but the ratio has shifted over time as the Bureau has expanded its supervisory and enforcement activity in the non-depository space. Although the ratio of depository cases stabilized at about 25% by 2015, cases against these institutions often involve relatively large amounts of consumer relief perhaps in part due to the size and number of customers of the institutions at issue. Over the Bureau's first four years, more than 60% of the consumer remedies and civil money penalties that the Bureau collected came from depository institutions. Peterson, *supra* note 15, at 1084–85, tbl. 4.

31. Dodd-Frank § 1013(c), 12 U.S.C. § 5493(c).

including supervision, enforcement, research, policy development, outreach, and engagement with the Department of Justice and other state and federal partners on a range of fair lending issues.³²

In addition to seeking remedies for specific violations of federal consumer financial laws, the Bureau has focused attention on a number of broader systemic issues in the course of its supervision and enforcement work. For example, across all institutions, the Bureau has made compliance management systems (“CMS”)—through which companies affirmatively engage in, monitor, and correct their own compliance activities on an ongoing basis—a primary focus of the Bureau’s examination program.³³ While banks and credit unions have long been required to maintain compliance management systems by federal and state regulators, this is a profound cultural change for many nonbanks.³⁴ After emphasizing the issue heavily in the first three years of examinations, the CFPB reported seeing “increased efforts” at developing CMS structures particularly among nonbanks in 2014,³⁵ but such systems remain an ongoing focus of the agency for all types of providers.³⁶ The Bureau has also emphasized that financial institutions’ monitoring obligations extend to oversight of their service providers, as well as their own employees and affiliates.³⁷ Again, this concept is not

32. See, e.g., Fair Lending Report of the Consumer Financial Protection Bureau, 81 Fed. Reg. 29533 (May 12, 2016) (highlighting a range of interagency enforcement actions, referrals, coordination, and webinars).

33. See, e.g., CONSUMER FIN. PROT. BUREAU, CFPB SUPERVISION & EXAMINATION MANUAL VERSION 2, at CMR 1 (Oct. 2012), http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf; CONSUMER FIN. PROT. BUREAU, CFPB BULLETIN 2012-03 (April 13, 2010), http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf; SUPERVISORY HIGHLIGHTS: FALL 2012, *supra* note 23, at 4–7; SUPERVISORY HIGHLIGHTS: FALL 2016, *supra* note 23, at 3–4, 12, 24–25.

34. See, e.g., CONSUMER FIN. PROT. BUREAU, SUPERVISORY HIGHLIGHTS: SUMMER 2013 6 (2013), http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf (reporting that some non-banks were “lacking a CMS structure altogether”); Jean Braucher & Angela Littwin, *Examination as a Method of Consumer Protection*, 58 ARIZ. L. REV. 33, 68–71, 77–80 (2016).

35. See, e.g., CONSUMER FIN. PROT. BUREAU, SUPERVISORY HIGHLIGHTS: SUMMER 2014 5, 11–12 (2014), http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf; CONSUMER FIN. PROT. BUREAU, SUPERVISORY HIGHLIGHTS 5 (Fall 2014), http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf.

36. SUPERVISORY HIGHLIGHTS: FALL 2016, *supra* note 23, at 3–4, 12, 24–25 (discussing compliance management systems examined in auto loan markets in the first year after supervision jurisdiction was established, as well as CMS in the context of mortgage originations and the provision of language services to consumers with limited English proficiency).

37. CONSUMER FIN. PROT. BUREAU, CFPB BULLETIN 2016-02 (Oct. 31, 2016)

entirely new with regard to depository institutions, but is a particular shift for many nonbank financial services providers.³⁸

More recently, the Bureau issued a bulletin highlighting potential compliance concerns with production incentives for both employees and service providers, drawing on its supervision and enforcement experience across a broad range of financial services providers and markets. Although the recent Wells Fargo matter had drawn particular attention to concerns about incentives related to account opening,³⁹ the bulletin highlights how incentives can be used at many stages of the life cycle for consumer financial products and services and can be structured in many different ways. The bulletin summarizes Bureau actions relating to production incentives issues across a number of different product areas over the last five years and outlines ways that providers can adjust their compliance management systems to monitor for signs that incentives may be encouraging legal violations and other consumer harm.

The Bureau has also built partnerships to increase the efficiency

[hereinafter CFPB BULLETIN 2016-02], https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf (amending *CFPB Bulletin 2012-03*). The Bureau has recognized that outsourcing is often an appropriate and efficient decision for many financial institutions, but has emphasized that the “mere fact that a supervised entity has entered into a business relationship with another company does not absolve [it] of its obligation to comply with federal consumer financial laws.” CFPB BULLETIN 2016-02, *supra* note 37, at 2–3.

38. See, e.g., FED. DEPOSIT INS. CORP., FINANCIAL INSTITUTION LETTER: GUIDANCE FOR MANAGING THIRD-PARTY RISK (June 6, 2008), <https://www.fdic.gov/news/news/financial/2008/fil08044a.html> (providing a “general framework for the implementation of an effective third-party risk management process”); DIV. OF BANKING SUPERVISION & REGULATION & DIV. OF CONSUMER & CMTY. AFFAIRS, FED. RESERVE BD., SR-13-19, GUIDANCE ON MANAGING OUTSOURCING RISK (Dec. 5, 2013), <https://www.federalreserve.gov/bankinforeg/srletters/sr1319a1.pdf> (“If not managed effectively, the use of service providers may expose financial institutions to risks that can result in regulatory action, financial loss, litigation, and loss of reputation.”); NAT. CREDIT UNION ADMIN., SUPERVISORY LETTER NO. 07-01, EVALUATING THIRD PARTY RELATIONSHIPS (Oct. 2007), <https://www.ncua.gov/Resources/Documents/LCU2007-13ENC.pdf> (discussing the “appropriate evaluation of third-party relationships where credit unions outsource key business functions”); OFFICE OF COMPTROLLER OF THE CURRENCY, BULLETIN 2013-29, THIRD PARTY RELATIONSHIPS (Oct. 30, 2013), <https://www.occ.gov/news-issuances/bulletins/2013/bulletin-2013-29.html> (“The OCC expects a bank to have risk management processes that are commensurate with the level of risk and complexity of its third-party relationships and the bank’s organizational structures.”).

39. See CFPB Press Release regarding Wells Fargo, *supra* note 14 (stating that Wells Fargo “had compensation incentive programs for its employees that encouraged them to sign up existing clients for deposit accounts, credit cards, debit cards, and online banking, and the bank failed to monitor the implementation of these programs with adequate care”).

and effect of its supervision and enforcement work. Consistent with Dodd-Frank's directive to coordinate its examinations, use of existing reports, and other supervisory activities with federal and state prudential regulators with regard to banks, thrifts, and credit unions under CFPB jurisdiction,⁴⁰ the Bureau has signed a Memorandum of Understanding with the Conference of State Bank Supervisors (CSBS), other state agency associations, and sixty-two agencies in all fifty states, the District of Columbia, Puerto Rico, and Guam.⁴¹ The Bureau has created a framework for coordination through the CSBS with the state agencies to facilitate the scheduling and staffing of joint examinations for both depositories and nonbank financial services providers, as well as various processes to share schedules, examination reports, and supervisory letters with its state counterparts. The Bureau also meets regularly with the four federal prudential regulators to coordinate supervisory and other activities, as well as holding staff sessions on a routine basis to discuss examinations and other supervisory activities concerning particular institutions.⁴²

Similarly, the Bureau's fair lending and enforcement staffs coordinate with counterparts in various federal and state agencies on an ongoing basis. The Bureau has signed memoranda of understanding with dozens of state attorneys general to govern information sharing and other matters.⁴³ The Bureau has cited coordination with other government agencies in about one-third of the 122 cases it had publicly announced through the end of 2015, including all of the cases focusing on the Equal Credit Opportunity Act.⁴⁴

40. Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") § 1025(b)(2), (3), 12 U.S.C. § 5515(b)(2), (3) (2015).

41. CONSUMER FIN. PROT. BUREAU, SUPERVISORY HIGHLIGHTS ISSUE 12, SUMMER 2016 20–21 (2016), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_12.pdf.

42. *Id.* at 21. The four prudential regulators are the FRB, OCC, FDIC, and NCUA.

43. The Bureau's sharing of confidential information is also addressed in regulation and other guidance. *See* CFPB Disclosure of Records and Information, 12 C.F.R. pt. 1070 (2016) (describing the procedures for sharing information); CONSUMER FIN. PROT. BUREAU, CFPB BULLETIN 12-01, THE BUREAU'S SUPERVISION AUTHORITY AND TREATMENT OF CONFIDENTIAL SUPERVISORY INFORMATION (Jan. 4, 2012), http://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf (stating that "because entities must comply with the Bureau's supervisory request for information, the provision of privileged information to the Bureau would not be considered voluntary and would thus not waive any privilege that attached to such information").

44. Peterson, *supra* note 15, at 1082–83, 1091, 1096.

B. *Consumer Education, Engagement, and Complaints*

The Bureau's direct engagement with consumers through its Division of Consumer Education and Engagement and Office of Consumer Response has also impacted millions of consumers over the last five years. For example, the Bureau's "Ask CFPB" website feature has received more than 12 million unique visitors, and the Bureau has issued a series of Consumer Advisories to provide targeted information on various topics.⁴⁵ The Bureau has also built comprehensive consumer response operations, starting with credit card complaints in July 2011 and expanding over time to include complaints concerning a broad range of consumer financial products and services.⁴⁶ The Bureau handled its one millionth consumer complaint in the fall of 2016.⁴⁷ In addition, the Bureau is also building long-term infrastructure—including partnerships, information exchanges, and research initiatives—to help increase the distribution and efficacy of financial education and empowerment initiatives and to support these initiatives through CFPB information or technical assistance. Finally, the Bureau has established several offices to focus on outreach, engagement, and policy initiatives to support particular populations of consumers.⁴⁸

The Bureau's website has become an important engagement tool for a broad range of consumer interactions in both English and Spanish, and has been consciously designed to have a different voice and presentation than a typical federal agency.⁴⁹ The Ask CFPB feature is a

45. NUMBERS FACTSHEET, *supra* note 1; CONSUMER FIN. PROT. BUREAU, CONSUMER FINANCIAL PROTECTION BUREAU: HELPING CONSUMERS HELP THEMSELVES 4 (July 2016) [hereinafter HELPING CONSUMERS HELP THEMSELVES FACTSHEET], https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/07132016_cfpb_CEE_anniversary_factsheet.pdf.

46. CONSUMER FIN. PROT. BUREAU, CONSUMER RESPONSE ANNUAL REPORT: JANUARY 1–DECEMBER 31, 2015 5 (Mar. 2016) [hereinafter 2015 ANNUAL REPORT], http://files.consumerfinance.gov/f/201604_cfpb_consumer-response-annual-report-2015.pdf.

47. Press Release, Consumer Fin. Prot. Bureau, CFPB Complaint Snapshot Spotlights Money Transfer Complaints: Bureau Marks Over One Million Consumer Complaints Handled (Sept. 27, 2016), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-complaint-snapshot-spotlights-money-transfer-complaints/>.

48. HELPING CONSUMERS HELP THEMSELVES FACTSHEET, *supra* note 45, at 4–10.

49. FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 46–49; CONSUMER FIN. PROT. BUREAU, 2016 FINANCIAL LITERACY REPORT 32–43 (Oct. 2016), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102016_cfpb_FinancialLiteracyReport.pdf (discussing the Bureau's redesign of its website to further strengthen consumer-focused materials).

core component, with more than 1,000 questions and answers about consumer financial products and services that are updated and expanded in response to consumer usage patterns and other developments over time.⁵⁰ The “Tell Your Story” function allows consumers to share their experiences in the marketplace.⁵¹ The Bureau also provides suites of interactive tools to focus on some of consumers’ most important life decisions (including owning a home, paying for college, shopping for auto loans, and planning for retirement), a search function to help find local non-profit housing counseling agencies, and periodic Consumer Advisories addressing various topics.⁵² Further, the Bureau uses various social media platforms to increase consumer attention to its website resources, as well as to engage in a dialogue with consumers.⁵³

The website also serves as the main channel for submitting consumer complaints, although the Bureau also accepts complaints by telephone, mail, fax, email, and referral from other agencies.⁵⁴ The Bureau’s secure, web-based system facilitates timely processing of complaints and communications among the consumer, the Bureau, and the individual company.⁵⁵ While many other federal and state financial

50. HELPING CONSUMERS HELP THEMSELVES FACTSHEET, *supra* note 45, at 4.

51. HELPING CONSUMERS HELP THEMSELVES FACTSHEET, *supra* note 45, at 2–3. Bureau staff review narratives received through the Tell Your Story function of the Bureau’s website to inform general market monitoring. 2015 ANNUAL REPORT, *supra* note 46, at 10.

52. HELPING CONSUMERS HELP THEMSELVES FACTSHEET, *supra* note 45, at 7–10; Mary Griffin & Mauricio Videla, *The CFPB: Standing up for Consumers in the Financial Marketplace*, BUS. L. TODAY 1–2 (July 2016), <http://www.americanbar.org/content/dam/aba/publications/blt/2016/07/standing-up-201607.authcheckdam.pdf>.

53. See, e.g., Press Release, Consumer Fin. Prot. Bureau, CFPB Launches Education Campaign About New International Money Transfer Protections (Oct. 28, 2013), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-education-campaign-about-new-international-money-transfer-protections/>; CONSUMER FIN. PROT. BUREAU, HELP US HELP YOUR SERVICEMEMBERS 1 (Jan. 2014), http://files.consumerfinance.gov/f/201401_cfpb_guide_add-osa-to-your-website.pdf; CONSUMER FIN. PROT. BUREAU, TELL US ABOUT YOUR STUDENT DEBT STRESS (May 14, 2015), <http://www.consumerfinance.gov/about-us/blog/tell-us-about-your-student-debt-stress/>; Matt Gunn, *Answering to a Higher Authority*, BANK SYS. & TECH. (Mar. 1, 2011).

54. FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 20–21, 45–46. More than 70% of complaints are submitted via the website. FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 21.

55. FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 20–21, 45–46. Specifically, the complaints are initially screened by Bureau employees to determine such items as completeness, whether they are within the scope of the Bureau’s jurisdiction, and whether they should be routed to other regulators. About 70% of the screened complaints are forwarded to financial services providers via the web portal for response and resolution. Generally within fifteen to sixty days, depending on the nature of the complaint, the

regulators have complaint functions of some kind, the Bureau's system is particularly attractive to consumers because they do not need to determine at the outset which regulator oversees the particular company.⁵⁶

More than 3,600 companies have responded to consumer complaints sent to them by the CFPB, and approximately 97% of complaints sent to companies are responded to in a timely fashion.⁵⁷ The complaint process has generated both monetary and non-monetary remedies for consumers, such as helping families stay in their homes, correcting credit reports, and stopping harassing behavior by debt collectors.⁵⁸ But the function is also having other impacts on both the agency and the broader marketplace beyond the individual consumers served. The analysis of complaints, company responses, and consumer feedback by Bureau Consumer Response staff informs the identification of supervisory and enforcement priorities and the prioritization and scope of the Bureau's rulemaking work.⁵⁹ The Bureau's public

companies report the outcome back through the portal to the Bureau and the consumer, who is then given a chance to review and provide feedback. Information about the complaint is published in the Bureau's public database. CONSUMER FIN. PROT. BUREAU, SEMI-ANNUAL REPORT 20–21 (Spring 2016) [hereinafter SPRING 2016 SEMI-ANNUAL REPORT], https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Report.Spring_2016_SAR.06.28.16.Final.pdf; FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 20–21, 35–36.

56. HELPING CONSUMERS HELP THEMSELVES FACTSHEET, *supra* note 45; SPRING 2016 SEMI-ANNUAL REPORT, *supra* note 55, at 16–21. For a description of some of the challenges consumers had faced previously in deciding which agency to contact, see Katherine Porter, *The Complaint Conundrum: Thoughts on the CFPB's Complaint Mechanism*, 7 BROOK. J. CORP. FIN. & COM. L. 57, 59–60 (2012). Approximately 12–13% of complaints reach the CFPB through referrals from other regulators, and the CFPB refers a similar percentage of complaints to other agencies (generally because it lacks jurisdiction). SPRING 2016 SEMI-ANNUAL REPORT, *supra* note 55, at 16–21; FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 20–21, 35–36.

57. FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 35–36; CONSUMER FIN. PROT. BUREAU, THE CFPB: MAKING CONSUMERS COUNT 2, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/07132016_cfpb_Top_5.pdf (last visited Feb. 5, 2017).

58. SPRING 2016 SEMI-ANNUAL REPORT, *supra* note 55, at 40–45; FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 35–36.

59. See, e.g., Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864, 47874, 47882–83, 47898 (July 22, 2016) (to be codified at 12 C.F.R. pt. 1041) (discussing various types of complaints received in connection with payday, auto title, and other small dollar lending); CONSUMER FIN. PROT. BUREAU, SMALL BUSINESS REVIEW PANEL FOR DEBT COLLECTOR AND DEBT BUYER RULEMAKING: OUTLINE OF PROPOSALS UNDER CONSIDERATION AND ALTERNATIVES CONSIDERED 1–2, 5, 22 (July 28, 2016) [hereinafter SMALL BUSINESS PANEL], http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf (discussing various types of complaints received

complaint database, which debuted in June 2012, has also become the single biggest repository of federal consumer financial complaints in the country. The database contains searchable records on more than half a million complaints, and has grown to include more than 103,000 consumer narratives since the Bureau began publishing them with consumer permission in June 2015.⁶⁰

The Bureau publishes both annual and monthly reports to highlight marketplace trends and note other developments.⁶¹ Academics, journalists, and other third-party observers are beginning to mine the data for insights as well.⁶² Although many industry groups have reacted negatively to publication of complaint data, some observers have argued that the increased transparency and focus on complaints actually presents an opportunity for financial services providers, and that it is making companies more responsive to customer dissatisfaction levels through proactively monitoring social media and other sources to reduce the odds of receiving a complaint via the CFPB.⁶³ The Bureau has noted that many companies now use the

in connection with debt collection); FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 35–37 (discussing use of complaint information in supervision and enforcement); Angela Littwin, *Why Process Complaints? Then and Now*, 87 TEMP. L. REV. 895, 933–34 (2015) (describing use of complaint information in the CFPB’s first public enforcement action and a large number of articles by private practitioners in the wake of that action urging companies to pay closer attention to complaint resolution).

60. FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 9, 17–19. The Bureau only publishes narratives for which the consumer opted in and a robust process has been applied to scrub personal information. The Bureau gives companies the option of responding publicly by selecting from a set list of categories. FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 9, 17–19. In July 2016, the Bureau published a Federal Register notice seeking comment on a plan to allow consumers to rate how companies resolved their complaints. CFPB Agency Information Collection Activities: Comment Request, 81 Fed. Reg. 50484 (July 29, 2016).

61. 2015 ANNUAL REPORT, *supra* note 46, at 10; CONSUMER FIN. PROT. BUREAU, MONTHLY COMPLAINT REPORT VOL. 15 (Sept. 2016), http://files.consumerfinance.gov/f/documents/092016_cfpb_MonthlyComplaintReportVol15.pdf.

62. See, e.g., Littwin, *supra* note 59; Ian Ayres et. al., *Skeletons in the Database: An Early Analysis of the CFPB’s Consumer Complaints*, 19 FORDHAM J. CORP. & FIN. L. 343 (2014); DORI DAGANHARDT, BLACK KNIGHT FIN. SERVICES, ANALYSIS AND STUDY OF CFPB CONSUMER COMPLAINT DATA RELATED TO MORTGAGE SERVICING ACTIVITIES (2015), http://dsnews.com/wp-content/uploads/sites/25/2015/04/WP_DNA_CFPBComplaintTrackingWhitePaper_FullReport_FINAL.pdf; Brandon Purcell, *Mining the CFPB Complaint Database to Improve Your Customer Experience*, THE FIN. BRAND (Oct. 1, 2013), <https://thefinancialbrand.com/33944/data-mining-cfpb-database-customer/>; DELOITTE, CFPB’S CONSUMER COMPLAINT DATABASE: ANALYSIS YIELDS VALUABLE INSIGHTS (Sept. 2013), <http://deloitte.wsj.com/riskandcompliance/files/2014/01/CFPBConsumerComplaintDatabase.pdf>.

63. See, e.g., John-Ashley Paul, *Be Happy the CFPB Makes It Easier to Complain*,

public database to research complaints made about others in the same markets, which is valuable information that is not available from any other source.⁶⁴

The Bureau is also investing heavily in supporting infrastructure to better leverage the impact of its other consumer education and engagement activities. For example, in addition to producing a broad range of financial education materials for use by consumers and organizations that work with consumers,⁶⁵ the Bureau is focusing on building partnerships with intermediary agencies and organizations to facilitate their work helping consumers build financial capability. Bureau initiatives include developing materials for and partnerships with schools, employers, public libraries, social services providers, financial educators, and community-based organizations, and also training and distributing materials to thousands of personnel and sites.⁶⁶ The Bureau has also created a CFPB Financial Exchange to provide an online and in-person mechanism to facilitate ongoing discussions among financial education practitioners, as well as centralized access to

CREDIT UNION TIMES (Dec. 17, 2015), <http://www.cutimes.com/2015/12/17/be-happy-the-cfpb-makes-it-easier-to-complain>; Anne Rosso May, *The Upside of Consumer Complaints*, ACA INT'L 16–21 (Dec. 1, 2015), <http://online.collector.com/collectormagazine/201512/#/18>; Craig Nazarro, *The CFPB's Complaint Database Is a Treasure Trove of Opportunity*, NAT'L MORTG. NEWS (Oct. 22, 2015), <http://www.nationalmortgagenews.com/news/compliance-regulation/the-cfpbs-complaint-database-is-a-treasure-trove-of-opportunity-1064179-1.html>; Stephen J. Ramirez, *Turning Lemons into Lemonade*, MORTG. BANKING (July 2014), http://beyondthearc.com/wp-content/media/news/070114_MortgageBanking.pdf; Jonice Gray et. al., *Complaint Management Lessons from Dr. Seuss*, LAW360 (May 21, 2014, 6:58 PM), <https://www.law360.com/articles/539202/complaint-management-lessons-from-dr-seuss>; Amy Fontinelle, *Why Banks Are Scrambling to Hear Your Complaints*, FORBES (Oct. 25, 2013, 10:27 AM), <http://www.forbes.com/sites/investopedia/2013/10/25/why-banks-are-scrambling-to-hear-your-complaints/#38b25a32495c>; see also Littwin, *supra* note 59, at 934 (cataloguing a large number of articles by private practitioners urging companies to pay closer attention to complaint resolution in the wake of CFPB enforcement actions building on complaints and other sources).

64. 2015 ANNUAL REPORT, *supra* note 46, at 2.

65. The Bureau has also developed Money as You Grow resources for parents, teachers, and other caregivers to use in financial education of children. HELPING CONSUMERS HELP THEMSELVES FACTSHEET, *supra* note 45, at 6.

66. See FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 46–48 (stating that the Bureau is “building channels with a broad range of entities that consumers trust and may look to for financial and related guidance”); Griffin & Videla, *supra* note 52 (“The CFPB has forged relationships with social service providers, financial educators, and community-based organizations—including legal aid organizations—to better reach the more than 100 million low- to moderate-income consumers and to provide them with information when they need it most.”).

CFPB resources and research insights. Finally, the Bureau is investing in research to identify lessons learned since the financial crisis about how to increase the efficacy of financial education programs by evaluating consumers' financial well-being and studying what contributes to it.⁶⁷

The Bureau has also created four offices to focus on the needs of particular populations of consumers: servicemembers, older Americans, students, and low-income and economically vulnerable consumers. Each office is engaged in a range of outreach, partnerships, and policy initiatives on an ongoing basis. For example, based in part on ongoing analysis of student loan complaints in conjunction with Dodd-Frank's creation of a Student Loan Ombudsman within the Bureau,⁶⁸ the Bureau's Office of Students has issued a series of reports on problems that student loan borrowers experience in the marketplace and has worked closely with the U.S. Department of Education and Department of Treasury on policy initiatives in response to those reports.⁶⁹ The Office of Older Americans has worked with other parts

67. FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 47; HELPING CONSUMERS HELP THEMSELVES, *supra* note 45, at 4.

68. Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") § 1035(a), 12 U.S.C. § 5535(a) (2012); CONSUMER FIN. PROT. BUREAU, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN (Oct. 2015) [hereinafter STUDENT LOAN OMBUDSMAN REPORT], http://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf. In addition to its longstanding focus on private student loans, the Bureau began accepting complaints about the servicing of federal student loans in February 2016.

69. See, e.g., CONSUMER FIN. PROT. BUREAU & U.S. DEP'T OF EDUC., PRIVATE STUDENT LOANS (Aug. 29, 2012), http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf; CONSUMER FIN. PROT. BUREAU, STUDENT LOAN SERVICING: ANALYSIS OF PUBLIC INPUT AND RECOMMENDATIONS FOR REFORM (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf; Press Release, U.S. Dep't of Educ., Department of Education, Department of Treasury and the Consumer Financial Protection Bureau Issue Joint Principles on Student Loan Servicing (Sept. 29, 2015), <https://www.ed.gov/news/press-releases/department-education-department-treasury-and-consumer-financial-protection-bureau-issue-joint-principles-student-loan-servicing>; Press Release, Consumer Fin. Prot. Bureau, CFPB Unveils Student Loan 'Payback Playbook' to Provide Borrowers with Personalized Snapshot of Repayment Options (Apr. 28, 2016), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-unveils-student-loan-payback-playbook-provide-borrowers-personalized-snapshot-repayment-options/> (announcing and linking to several CFPB initiatives in conjunction with various actions by the Departments of Treasury and Education); Press Release, Consumer Fin. Prot. Bureau, CFPB and Department of Education Partner on New Financial Aid Shopping Sheet (Oct. 25, 2011), <http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-department-of-education-partner-on-new-financial-aid-shopping-sheet/>; Press Release, U.S. Dep't of Educ., Education Department to Implement Improved Customer Service and Enhanced Protections for Student Loan Borrowers (July 20, 2016), <http://>

of the Bureau to produce a number of advisories and guidance to both consumers and financial institutions to combat elder financial exploitation and fraud, partnered with the FDIC to help produce a “Money Smart for Older Adults” toolkit, and created a series of “Managing Someone Else’s Money” guides to assist family members who serve as financial caregivers.⁷⁰ The Office of Financial Empowerment has also worked on a series of education and research programs, including the “Your Money, Your Goals” curriculum for social services providers, in addition to partnering with government agencies, community-based organizations, and other entities on financial coaching and other initiatives.⁷¹ The Office of Servicemember Affairs also works closely with the Department of Defense and several other federal agencies on a broad range of activities concerning servicemembers, guard and reserve members, and veterans, as well as engaging in a number of Bureau education initiatives and assisting the Office of Consumer Response and Office of Enforcement in monitoring complaints.⁷² Concerns highlighted in Bureau enforcement actions have

www.ed.gov/news/press-releases/education-department-implement-improved-customer-service-and-enhanced-protections-student-loan-borrowers (announcing protections and customer service standards developed after consultation with the Bureau and Treasury Department).

70. Griffin & Videla, *supra* note 52, at 2; Press Release, Consumer Fin. Prot. Bureau, FDIC and CFPB Collaborate to Develop a Tool for Older Adults to Prevent Financial Exploitation (June 12, 2013), <http://www.consumerfinance.gov/about-us/newsroom/fdic-and-cfpb-collaborate-to-develop-a-tool-for-older-adults-to-prevent-financial-exploitation/>.

71. See, e.g., CONSUMER FIN. PROT. BUREAU, EMPOWERING LOW INCOME AND ECONOMICALLY VULNERABLE CONSUMERS: REPORT ON A NATIONAL CONVENING (Nov. 2013), http://files.consumerfinance.gov/f/201311_cfpb_report_empowering-economically-vulnerable-consumers.pdf; Daniel Dodd-Ramirez, *Your Money, Your Goals: Financial Empowerment Tools for Social Services*, CONSUMER FIN. PROT. BUREAU (July 30, 2014), <http://www.consumerfinance.gov/about-us/blog/your-money-your-goals-financial-empowerment-tools-for-social-services/>; Richard Cordray, Director, Consumer Fin. Prot. Bureau, Prepared Remarks at Financial Coaching Launch (May 20, 2015), <http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-financial-coaching-launch/>; Cliff Rosenthal, *A Federal Partnership to Increase Financial Capability for Workers with Disabilities*, CONSUMER FIN. PROT. BUREAU (Aug. 23, 2016), <http://www.consumerfinance.gov/about-us/blog/a-federal-partnership-to-increase-financial-capability-for-workers-with-disabilities/>.

72. HELPING CONSUMERS HELP THEMSELVES FACTSHEET, *supra* note 45, at 4–10; 2015 ANNUAL REPORT, *supra* note 46, at 13; Press Release, Consumer Fin. Prot. Bureau, CFPB Launches Financial Coaching Initiative (May 20, 2015), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-financial-coaching-initiative/> (announcing coaching initiative targeting recently transitioned veterans developed in conjunction with the U.S. Department of Labor and a range of other partner organizations); CONSUMER FIN. PROT. BUREAU, FRAUD PROTECTION TOOLS TO HELP SAFEGUARD SERVICEMEMBERS (Sept. 1, 2015), http://files.consumerfinance.gov/f/201508_cfpb_fraud-protection-tools-to-help-safeguard-

prompted other federal agencies to change policies relating to military allotments and application of interest rate protections under the Servicemembers Civil Relief Act.⁷³

C. *Research, Market Monitoring, and Regulations*

The Bureau's research, market monitoring, and regulations work has also impacted selected markets in fundamental ways. Although much of the Bureau's early rulemaking work focused on implementing congressionally mandated reforms to the mortgage markets and closing gaps in federal protections for various payment mechanisms, in more recent years the Bureau has launched a number of discretionary rulemakings on such topics as payday lending, debt collection, and arbitration of disputes concerning consumer financial services.⁷⁴ The Bureau has conducted ground-breaking research on a number of critical market issues to support these initiatives, as well as building a substantial support structure to facilitate the industry's implementation of new regulations as individual projects have been completed. Bureau staff is also engaged in ongoing market monitoring, development of new research capacity, and other new projects that both support the broader range of the Bureau's activities and enable the Bureau to deepen its understanding of market dynamics and the efficacy of its various regulatory actions and tools overtime.

The Bureau's first wave of rulemakings focused on

servicemembers.pdf.

⁷³ See, e.g., Press Release, U.S. Dep't of Defense, Release No: NR-585- 14, Department of Defense Announces New Policy on Service Member Allotments (Nov. 21, 2014), <https://www.defense.gov/News/News-Releases/News-Release-View/Article/605286>; Letter from Lynn B. Mahaffie, Acting Assistant Sec'y of Postsecondary Educ., Federal Student Aid Office, U.S. Dep't of Educ., to Colleague, GEN-14-16 (Aug. 25, 2014), <https://ifap.ed.gov/dpcletters/GEN1416.html> (streamlining application of special SCRA interest rates for active-duty servicemembers); Press Release, Dep't of Justice, Department of Justice Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014), <https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging> (announcing results of a joint settlement effort involving the Bureau, FDIC, and Departments of Education and Justice). See generally U.S. GOV'T ACCOUNTABILITY OFFICE, STUDENT LOANS: OVERSIGHT OF SERVICEMEMBERS INTEREST RATE CAP COULD BE STRENGTHENED 13–16 (Nov. 2016), <http://www.gao.gov/assets/690/681010.pdf> (describing the impact of the Department of Education change).

⁷⁴ See, e.g., Kelly Cochran, *Spring 2016 Unified Agenda*, CONSUMER FIN. PROT. BUREAU (May 18, 2016), <http://www.consumerfinance.gov/about-us/blog/spring-2016-rulemaking-agenda/>.

implementation of Dodd-Frank directives to develop comprehensive federal regulations for international money transfers (often called “remittances”) and to reform various aspects of the mortgage market, including disclosures, underwriting and other originations procedures, servicing, and data reporting.⁷⁵ Dodd-Frank set tight statutory deadlines for some of these rulemakings, while leaving flexibility for others. Accordingly, the Bureau issued the final rule on remittances just six months after the designated transfer date⁷⁶ and a series of major mortgage rules starting in January 2013 and concluding in November 2015.⁷⁷ In addition to the mandated rulemaking on remittances, the

75. See, e.g., Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) § 1073, 12 U.S.C. § 5601 (2015) (amending the Electronic Fund Transfer Act to provide protections for remittance transfers); Dodd-Frank §§ 1032(f), 1098(2), 1100A(5), 12 U.S.C. §§ 5532(f), 2603, 15 U.S.C. § 1604 (directing the Bureau to consolidate mortgage disclosures under the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA)); Dodd-Frank § 1094, 12 U.S.C. § 2803 (amending the Home Mortgage Disclosure Act (HMDA)), tit. XIV (amending TILA and RESPA to require various mortgage reforms). For a discussion of some of the techniques the Bureau uses to go about public engagement in rulemaking, see Patricia A. McCoy, *Public Engagement in Rulemaking: The Consumer Financial Protection Bureau’s New Approach*, 7 BROOK. J. CORP. FIN. & COM. L. 1 (2012); Leonard J. Kennedy et. al., *The Consumer Financial Protection Bureau: Financial Regulation for the Twenty-First Century*, 97 CORNELL L. REV. 1141 (2012); see also *Small Business Review Panels*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/policy-compliance/rulemaking/small-business-review-panels/> (last visited Feb. 6, 2017).

76. Electronic Fund Transfers (Reg. E), 77 Fed. Reg. 6194 (Feb. 7, 2012) (codified at 12 CFR pt. 1005).

77. Specifically, the Bureau issued several rules to implement originations and servicing requirements in title XIV of the Dodd-Frank Act in January 2013. See Escrow Requirements under the Truth in Lending Act (Reg. Z), 78 Fed. Reg. 4726 (Jan. 22, 2013) (codified in 12 C.F.R. pt. 1026); High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Reg. Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Reg. X), 78 Fed. Reg. 6856 (Jan. 31, 2013) (codified at 12 C.F.R. pts. 1024 and 1026); Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Reg. Z), 78 Fed. Reg. 6408 (Jan. 30, 2013) (codified at 12 C.F.R. pt. 1026); Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Reg. B), 78 Fed. Reg. 7216 (Jan. 31, 2013) (codified at 12 C.F.R. pt. 1002); Appraisals for Higher-Priced Mortgage Loans (Reg. Z), 78 Fed. Reg. 10368 (Feb. 13, 2013) (codified at 12 C.F.R. pt. 1026); Mortgage Servicing Rules Under the Truth in Lending Act (Reg. Z), 78 Fed. Reg. 10902 (Feb. 14, 2013) (codified at 12 C.F.R. pt. 1026); Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Reg. X), 78 Fed. Reg. 10696 (Feb. 14, 2013) (codified at 12 C.F.R. pt. 1024); Loan Originator Compensation Requirements Under the Truth in Lending Act (Reg. Z), 78 Fed. Reg. 11280 (Feb. 15, 2013) (codified at 12 C.F.R. pt. 1026). It issued a final rule to consolidate federal mortgage disclosures under TILA and RESPA in November 2013 and a rule to implement changes to mortgage data reporting under HMDA in November 2015. See Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Reg. X) and the Truth in Lending Act (Reg. Z), 78 Fed. Reg. 79730 (Dec. 31, 2013) (codified at 12 C.F.R. pts. 1024 and 1026); Home Mortgage

Bureau addressed a second major gap in existing federal regulation of consumer payment mechanisms by developing comprehensive protections for prepaid products, which have become increasingly important to consumers over the last decade as bank account substitutes and as a way of conducting digital transactions.⁷⁸ These rulemakings will largely have all taken effect by 2018.⁷⁹

In connection with these statutory rulemakings and other regulatory initiatives, the Bureau has worked hard to carefully calibrate regulatory burdens on financial services providers. For example, the Bureau used the statutory rulemakings mandated by Dodd-Frank to address a number of longstanding pain points for industry in the existing regulations, such as by formalizing interpretive guidance regarding mortgage disclosures and by adopting substantial technological reforms to facilitate the reporting of mortgage data.⁸⁰ The Bureau has also launched a number of smaller rulemaking initiatives to relieve burden and adjust regulations it inherited from other agencies,⁸¹ as well as

Disclosure (Reg. C), 80 Fed. Reg. 66128 (Oct. 15, 2015) (codified at 12 C.F.R. pt. 1003). The Bureau has issued some additional rulemakings since this time to clarify and supplement Dodd-Frank mandates. *See infra* note 81 and accompanying text.

78. Prepaid Accounts Under the Electronic Fund Transfer Act (Reg. E) and the Truth in Lending Act (Reg. Z), 81 Fed. Reg. 83934 (Nov. 22, 2016) (codified at 12 C.F.R. pts. 1005 and 1026). Regulations implementing the Electronic Fund Transfer Act already apply to payroll cards and certain government benefit cards, but had previously excluded general purpose reloadable (GPR) cards that can be purchased at grocery stores and other retail locations. The Bureau's new rule will provide more consistent regulation of a broad range of prepaid products, including GPR cards and digital wallets that actually hold consumer funds. Prepaid Accounts Under the Electronic Fund Transfer Act (Reg. E) and the Truth in Lending Act (Reg. Z), 81 Fed. Reg. at 83934.

79. *See, e.g.*, Home Mortgage Disclosure (Reg. C), 80 Fed. Reg. at 66256–58 (bulk of the HMDA rules take effect in January 2018, with new data reported in early 2019); Prepaid Accounts Under the Electronic Fund Transfer Act (Reg. E) and the Truth in Lending Act (Reg. Z), 81 Fed. Reg. at 83934 (bulk of the prepaid rules take effect in October 2017, with certain additional provisions in October 2018).

80. *See* Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Reg. X) and the Truth in Lending Act (Reg. Z) 77 Fed. Reg. at 51116, 51129, 51137 (Aug. 23, 2012) (codified at 12 C.F.R. pts. 1024 and 1026) (discussing the Bureau's approach to the level of guidance provided in the proposed disclosure rule based on industry experience with prior disclosure amendments and informal guidance provided by the Department of Housing and Urban Development); Home Mortgage Disclosure (Reg. C), 80 Fed. Reg. at 66128 (stating that a goal of the regulation is to “reduce unnecessary burden on financial institutions”).

81. *See, e.g.*, Amendment to the Annual Privacy Notice Requirement Under the Gramm-Leach-Bliley Act (Reg. P), 79 Fed. Reg. 64057 (Oct. 28, 2014) (codified at 12 C.F.R. pt. 1016) (altering the requirements for annual privacy notices); Truth in Lending (Regulation Z), 78 Fed. Reg. 25818 (May 3, 2013) (codified at 12 C.F.R. pt. 1026) (providing an ability to pay analyses for stay at home parents). The Bureau had also been

several follow-up rulemakings to make further adjustments to the new Dodd-Frank rules to reduce burdens and to clarify interpretive issues more generally.⁸² Finally, the Bureau has also developed a substantial program over the last five years to facilitate industry implementation of new regulations through outreach, compliance guides, webinars, informal interpretive guidance, a free “e-Regs” feature on its website, and other support tools.⁸³

The Bureau has also begun work on a series of discretionary rulemakings to address longstanding concerns in various consumer financial services markets, including payday and other small dollar consumer loans, arbitration of disputes over consumer financial products and services, debt collection, and overdraft services on consumer accounts. In each of these cases, the Bureau has conducted extensive and ground-breaking research over several years to inform its evaluation of risks to consumers and potential regulatory interventions.⁸⁴ The Bureau has now published specific Notices of

preparing to reexamine certain sticker disclosure requirements at automated teller machines, but Congress acted first to amend the law. Disclosures at Automated Teller Machines (Reg. E), 78 Fed. Reg. 18221 (Mar. 12, 2013) (codified at 12 C.F.R. pt. 1005).

82. See, e.g., Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Reg. X) and the Truth in Lending Act (Reg. Z), 81 Fed. Reg. 72160 (Oct. 19, 2016) (codified at 12 C.F.R. pts. 1024 and 1026) (amending mortgage servicing rules issued in January 2013); Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Reg. Z), 81 Fed. Reg. 54318 (Aug. 15, 2016) (codified 12 C.F.R. pt. 1026) (proposing amendments to the rules consolidating federal mortgage disclosures under TILA and RESPA that took effect in 2015); see also Electronic Fund Transfers (Regulation E), 78 Fed. Reg. 30662 (May 22, 2013) (adjusting the remittances rule to reduce burden with regard to disclosure of certain taxes and fees in foreign countries).

83. See generally *Implementation and Guidance*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/> (last visited Feb. 6, 2017) (providing links to collections of implementation support materials for various major Bureau rules); *eRegulations*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/eregulations/> (last visited Feb. 6, 2017) (providing links to current and historical regulations and regulatory history).

84. In preparation for the arbitration rulemaking, for example, the Bureau compiled and analyzed hundreds of consumer financial services contracts, records of the nation’s largest arbitration administrator concerning all consumer financial arbitrations filed between 2010 and 2012, individual and class actions concerning consumer financial products and services filed in federal court between 2010 and 2012, thousands of cases filed in selected state courts and small claims courts during the same period, and data tracking more than 1,000 public enforcement actions. The Bureau also conducted a national survey of credit card borrowers and engaged in various other analyses. See generally CONSUMER FIN. PROT. BUREAU, *ARBITRATION STUDY: REPORT TO CONGRESS, PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(A)* (Mar. 2015), http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf;

Proposed Rulemaking on small dollar loans and consumer arbitration⁸⁵ and an outline of proposals under consideration for regulation of third-party debt collectors.⁸⁶ The Bureau is also in the early stages of exploring other Dodd-Frank rulemakings.⁸⁷

The Bureau has structured its rulemaking process in a unique way by using interdisciplinary teams made up of staff from its separate

CONSUMER FIN. PROT. BUREAU, ARBITRATION STUDY PRELIMINARY RESULTS: SECTION 1028(A) STUDY RESULTS TO DATE (Dec. 12, 2013), http://files.consumerfinance.gov/f/201312_cfpb_arbitration-study-preliminary-results.pdf. The Bureau's small dollar rulemaking has involved analysis of loan level records for approximately 15 million payday loans, 3.5 million short-term auto title loans, and 2.5 million longer-term auto title and installment loans, as well as institution data reflecting about 14 million deposit accounts and account data concerning 100,000 accounts in connection with deposit advance products. See generally CONSUMER FIN. PROT. BUREAU, PAYDAY LOANS AND DEPOSIT ADVANCE PRODUCTS: A WHITE PAPER OF INITIAL DATA FINDINGS (Apr. 24, 2013), https://s3.amazonaws.com/files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf; CONSUMER FIN. PROT. BUREAU, CFPB DATA POINT: PAYDAY LENDING (Mar. 2014), https://s3.amazonaws.com/files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf; CONSUMER FIN. PROT. BUREAU, ONLINE PAYDAY LOAN PAYMENTS (Apr. 2016), http://files.consumerfinance.gov/f/201604_cfpb_online-payday-loan-payments.pdf; CONSUMER FIN. PROT. BUREAU, SINGLE-PAYMENT VEHICLE TITLE LENDING (May 2016), http://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf; CONSUMER FIN. PROT. BUREAU, SUPPLEMENTAL FINDINGS ON PAYDAY, PAYDAY INSTALLMENT, AND VEHICLE TITLE LOANS, AND DEPOSIT ADVANCE PRODUCTS (June 2016), http://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf. The overdraft project has analyzed samples of accounts from multiple institutions totaling 1.5 million accounts overall. CONSUMER FIN. PROT. BUREAU, CFPB STUDY OF OVERDRAFT PROGRAMS: A WHITE PAPER OF INITIAL DATA FINDINGS (June 2013), https://s3.amazonaws.com/files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf; CONSUMER FIN. PROT. BUREAU, DATA POINT: CHECKING ACCOUNT OVERDRAFT (July 2014), https://s3.amazonaws.com/files.consumerfinance.gov/f/201407_cfpb_report_data-point-overdrafts.pdf. All of these publications are available at <http://www.consumerfinance.gov/data-research/research-reports/>. The Bureau also has conducted the nation's first representative survey of consumers regarding their experiences with debt collection, and published the results in January 2017. CONSUMER FIN. PROT. BUREAU, CONSUMER EXPERIENCES WITH DEBT COLLECTION: FINDINGS FROM THE CFPB'S SURVEY ON CONSUMER VIEWS OF DEBT (Jan. 2017) [hereinafter 2017 CONSUMER SURVEY], http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf; see also SMALL BUSINESS PANEL, *supra* note 59, at app. B.

85. Arbitration Agreements, 81 Fed. Reg. 32830 (May 14, 2016) (codified at 12 C.F.R. pt. 1040); Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864 (July 22, 2016) (to be codified at 12 C.F.R. pt. 1041).

86. SMALL BUSINESS PANEL, *supra* note 59, at 1–2, 5, 22.

87. Cochran, *Fall 2016 Agenda*, *supra* note 19 (discussing preparations for a rulemaking to implement new data reporting requirements with regard to lending to small businesses and women and minority owned businesses under the Equal Credit Opportunity Act); see also Request for Information Regarding Consumer Access to Financial Records, 81 Fed. Reg. 83806 (Nov. 22, 2016) (requesting comment concerning consumer access to their financial records and noting the Bureau's authority to issue rules under section 1033 of the Dodd-Frank Act).

Research, Markets, and Regulations offices, as well as heavy consultation with the agency's supervision, enforcement, consumer engagement, and complaint functions and outreach to other agencies and external stakeholders. This ensures that economists and staff with substantial industry experience are embedded in the rulemaking process from the earliest stages, focusing on initial problem identification and evaluation of potential interventions, as well as during later formal drafting and comment stages. In addition to evaluating impacts of its regulations under the Paperwork Reduction Act and Regulatory Flexibility Act, as is required of federal agencies generally,⁸⁸ the Bureau's rulemaking process is subject to a number of special requirements under Dodd-Frank that are designed to improve the balance and effectiveness of its rules. These include special interagency procedures to gather input from small businesses that may be impacted by a potential rule,⁸⁹ repeated consultation with the federal prudential regulators and other relevant agencies,⁹⁰ a requirement to assess the benefits and costs of potential rules for both consumers and industry (specifically including consideration of impacts on consumer access to financial products and services, impacts on rural areas, and impacts on depository institutions with less than \$10 billion in assets),⁹¹ and a requirement to conduct an assessment of significant rules five years after their implementation date.⁹²

The Bureau has substantially increased the breadth and depth of its market monitoring and research work to support its rulemakings and other ongoing activities. For example, the Bureau is building unique data sources such as the National Mortgage Database, a joint project with the Federal Housing Finance Agency ("FHFA") to create a random

88. Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.* (2015); Regulatory Flexibility Act 5 U.S.C. § 601 *et seq.* (2015).

89. Regulatory Flexibility Act, 5 U.S.C. § 609(d) (requiring the convening of small business review panels in conjunction with the Small Business Administration's Office of Advocacy and the Office of Management and Budget's Office of Information and Regulatory Affairs).

90. Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") §1022(b)(2)(B), (C), §12 U.S.C. § 5512(b)(2)(B), (C) (2015). In addition, Bureau rules may be overturned by the Financial Stability Oversight Council in certain circumstances. *See* Dodd-Frank §1023(a), 12 U.S.C. § 5513(a).

91. Dodd-Frank § 1022(b)(2)(A), 12 U.S.C. § 5512(b)(2)(A).

92. Dodd-Frank § 1022(d), 12 U.S.C. § 5512(d). The Bureau is in the process of preparing for the first of these assessments in connection with the remittances and early mortgage rules.

1-in-20 sample of all closed-end first-lien mortgage loans outstanding at any time between January 1998 through the present in the files of one of the three national credit bureaus. The de-identified data is updated quarterly to provide a rich source for analyzing mortgage performance over time.⁹³ Similarly, the Bureau has also developed a Consumer Credit Panel consisting of a 1-in-48 longitudinal sample of de-identified credit reports that will provide the basis for a wide variety of other research projects over time.⁹⁴ The Bureau has already used this source to produce a survey of consumer experiences with debt collection⁹⁵ as well as a number of ground-breaking reports on credit reporting issues that are not tied to particular rulemakings,⁹⁶ and recently launched a web-based tool called “Consumer Credit Trends” to provide periodic reports on major credit markets.⁹⁷ Further, the Bureau developed a number of other research mechanisms, such as contracts with a number of universities and research institutions to use their economic research labs to conduct experiments on a variety of topics.⁹⁸

Indeed, the Bureau’s increasing research and market monitoring capacity supports all parts of its mission, and the Bureau is establishing a research agenda in its own right to focus on the dynamics of household balance sheets and various issues concerning the efficacy of

93. Robert B. Avery et. al., CONSUMER FIN. PROT. BUREAU, NATIONAL MORTGAGE DATABASE TECHNICAL REPORT 1.1 at 3 (Dec. 22, 2016), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/NMDB_technical_documentation_1.1_122216.pdf.

94. CONSUMER FIN. PROT. BUREAU, DATA POINT: CREDIT INVISIBLES 5–6 (May 2015) [hereinafter CREDIT INVISIBLES], http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf

95. 2017 CONSUMER SURVEY, *supra* note 84; SMALL BUSINESS PANEL, *supra* note 59, at app. B.

96. CREDIT INVISIBLES, *supra* note 94, at 5–6; CONSUMER FIN. PROT. BUREAU, CONSUMER CREDIT REPORTS: A STUDY OF MEDICAL AND NON-MEDICAL COLLECTIONS (Dec. 2014), http://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf; CONSUMER FIN. PROT. BUREAU, DATA POINT: MEDICAL DEBT AND CREDIT SCORES (May 2014), http://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf.

97. Press Release, Consumer Fin. Prot. Bureau, CFPB Unveils Consumer Credit Trends Tool to Help Forecast Potential Consumer Risks (Dec. 15, 2016), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-unveils-consumer-credit-trends-tool-help-forecast-potential-consumer-risks/>.

98. Jesse Leary & Heidi Johnson, *Research Priorities on Disclosure at the Consumer Financial Protection Bureau*, J. PUB. POLICY & MARKETING (forthcoming Spring 2017) (describing a three-part agenda relating to disclosure research and the Bureau’s contracts with various universities and research institutions to use their economic research labs in furtherance of this and other research).

consumer disclosures over time.⁹⁹ The Bureau weaves market monitoring activity into a broad array of periodic publications, including its semi-annual report to Congress¹⁰⁰ and various market-specific publications.¹⁰¹ The Bureau's Markets teams, which are made up of business professionals with substantial operational experience in the major markets that the Bureau oversees, are specifically tasked with ongoing outreach, monitoring, and policy initiatives in those markets to help increase information flows into the agency and to encourage best practices in the industry.¹⁰² These markets teams not only help to bring real-world operational experience to inform various Bureau functions, but also have helped to lead a number of specific initiatives on mortgage e-closings, checking accounts, and other topics.¹⁰³

III. DEVELOPING A MORE HOLISTIC APPROACH TO MARKETS AND CROSS-CUTTING ISSUES

In addition to building out each of the basic functions described

99. *Id.*; see also CONSUMER FIN. PROT. BUREAU, POLICY PRIORITIES OVER THE NEXT TWO YEARS (Feb. 2016), http://files.consumerfinance.gov/f/201602_cfpb_policy-priorities-over-the-next-two-years.pdf.

100. See, e.g., FALL 2016 SEMI-ANNUAL REPORT, *supra* note 12, at 38–46 (discussing shopping challenges for particular populations of consumers); SPRING 2016 SEMI-ANNUAL REPORT, *supra* note 55, at 46–49 (discussing shopping challenges for consumers in credit card and other markets).

101. The Bureau produces annual reports concerning debt collection and student loans, and biennial reports on credit cards. See e.g., CONSUMER FIN. PROT. BUREAU, FAIR DEBT COLLECTION PRACTICES ACT: CFPB ANNUAL REPORT 2015 (Mar. 2015), http://files.consumerfinance.gov/f/201503_cfpb-fair-debt-collection-practices-act.pdf; STUDENT LOAN OMBUDSMAN REPORT, *supra* note 68; CONSUMER FIN. PROT. BUREAU, CARD ACT REPORT: A REVIEW OF THE IMPACT OF THE CARD ACT ON THE CONSUMER CREDIT CARD MARKET (Oct. 1, 2013), http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.

102. The Bureau has four markets teams: (1) mortgages; (2) credit cards, deposits, and payments; (3) liquidity and installment lending, credit reporting, and collections; and (4) small business lending. *Bureau Structure*, *supra* note 12.

103. See, e.g., CONSUMER FIN. PROT. BUREAU, MORTGAGE CLOSINGS TODAY: A PRELIMINARY LOOK AT THE ROLE OF TECHNOLOGY IN IMPROVING THE CLOSING PROCESS FOR CONSUMERS (April 2014), http://files.consumerfinance.gov/f/201404_cfpb_report_mortgage-closings-today.pdf; CONSUMER FIN. PROT. BUREAU, LEVERAGING TECHNOLOGY TO EMPOWER MORTGAGE CONSUMERS AT CLOSING: LEARNINGS FROM THE ECLOSING PILOT (Aug. 2015), http://files.consumerfinance.gov/f/201508_cfpb_leveraging-technology-to-empower-mortgage-consumers-at-closing.pdf; CONSUMER FIN. PROT. BUREAU, *Forum on Access to Checking Accounts* (Oct. 18, 2014), <http://www.consumerfinance.gov/about-us/events/archive-past-events/forum-access-checking-accounts-washington-dc/> (video archive).

above, the Bureau as it has matured has worked to develop its strategic planning process and other mechanisms for better coordinating its work in particular markets and for identifying and addressing developing trends and cross-cutting issues on a more holistic basis.

With regard to strategic planning, for instance, in 2014, Bureau Director Richard Cordray explained that the Bureau was focusing much of its work on four types of problems in the consumer marketplace: (1) deception, or situations where the costs and risks of a financial decision are obscured or opaque; (2) debt traps, or practices that trigger a cycle of debt where consumers rack up substantial costs over time; (3) dead ends, or situations where people cannot “vote with their feet” when they are treated unfairly; and (4) discrimination, or unequal treatment based on characteristics such as race, gender, or other biases prohibited by law.¹⁰⁴ In early 2016, the Bureau elaborated on this basic framework by publishing a list of nine near-time priorities over the next two years.¹⁰⁵ The list describes why the Bureau has prioritized such areas as credit reporting, student lending, and providing consumers better tools to facilitate their financial decisions.¹⁰⁶ It also articulates the ways that the Bureau is using multiple tools, such as rulemaking, supervision, and consumer education initiatives, to complement each other and deepen its overall impact on the particular markets for consumer financial products and services that are included in the priorities.¹⁰⁷ The Bureau is maintaining ongoing working groups to facilitate execution of these goals.

104. See Richard Cordray, Director, Consumer Fin. Prot. Bureau, Prepared Remarks at the Greenlining Institute’s Economic Summit (Apr. 4, 2014), <http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-greenlining-institutes-economic-summit/>; see also CONSUMER FIN. PROT. BUREAU, POLICY PRIORITIES OVER THE NEXT TWO YEARS I (Feb. 2016), http://files.consumerfinance.gov/f/201602_cfpb_policy-priorities-over-the-next-two-years.pdf (explaining the process to turn this four-part framework into a more detailed strategic plan).

105. *Id.* at 2–14.

106. *Id.* Other priority areas include arbitration, debt collection, studying household balance sheets, mortgages, open-use credit (including various credit products that are offered without the expectation that the loan will be used for a specific purchase), and small business lending. *Id.*

107. The list does not include all ongoing work, and the Bureau has emphasized that financial services providers should remain focused on complying with all aspects of federal consumer financial law even if such laws concern topics not directly addressed; rather, the list is focused on forward-looking priorities where the Bureau is working to achieve particular outcomes in specific consumer financial markets. Accordingly, it also does not include some well-established work streams that were nearing completion at the time of issuance. *Id.*

The Bureau has also worked to launch several initiatives that could better position it over time to address and facilitate technological and product innovation to benefit consumers across multiple consumer financial markets. These include a Trial Disclosure Waiver Program, which relies on authority under Dodd-Frank to grant financial services providers temporary waivers from disclosure requirements under existing consumer financial laws so that they can conduct controlled field experiments concerning the form and content of consumer communications.¹⁰⁸ In addition, the Bureau has published a policy concerning the issuance of “No Action Letters” indicating that Bureau staff has no present intention to recommend enforcement or supervisory action with respect to specific applicants who are working to launch innovative financial products or services that promise substantial consumer benefit, but raise substantial uncertainty as to application of existing consumer financial laws.¹⁰⁹ The Bureau’s Project Catalyst initiative shepherded the development of these policies and plays a range of other roles inside and outside the Bureau to facilitate consumer friendly innovation. Project Catalyst issued a report in Fall 2016 detailing its activities to date, including engagement with both industry and regulators in the United States and abroad, partnerships with various private sector firms to run research pilots, and insights on the development of innovation in the marketplace.¹¹⁰

The Bureau has also created a Chief Data Office to better coordinate its use and management of data across functions and to improve its data infrastructure. In addition to enhancing its internal architecture, governance, and coordination, the Bureau is thinking

108. Policy to Encourage Trial Disclosure Programs; Information Collection, 78 Fed. Reg. 64389 (Oct. 29, 2013) (12 C.F.R. ch. X).

109. Policy on No-Action Letters; Information Collection, 81 Fed. Reg. 8686 (Feb. 22, 2016).

110. See CONSUMER FIN. PROT. BUREAU, PROJECT CATALYST REPORT: PROMOTING CONSUMER-FRIENDLY INNOVATION, (Oct. 2016), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102016_cfpb_Project_Catalyst_Report.pdf; see also Richard Cordray, Director, Consumer Fin. Prot. Bureau, Prepared Remarks at Money 20/20, (Oct. 23, 2016), <http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-money-2020/> (discussing Project Catalyst, a range of other Bureau initiatives, and the Bureau’s posture on several innovation issues); CONSUMER FIN. PROT. BUREAU, TOOLS FOR SAVINGS: USING PREPAID ACCOUNTS TO SET ASIDE FUNDS, (Sept. 2016), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/092016_cfpb_ToolsForSavingPrepaidAccounts.pdf (reporting results of a large field study with American Express suggesting that one-time incentives to encourage consumers to save money can have lasting effects on behavior).

through ways to provide data that will be useful to consumers and the broader marketplace. For example, the Bureau has made Home Mortgage Disclosure Act data available through an interactive tool and public application program interface¹¹¹ and is also publishing the results of ongoing surveys of recent mortgage borrowers conducted in conjunction with the Federal Housing Finance Agency.¹¹²

IV. CONCLUSION

The Bureau's infrastructure and partnerships both within and across functions have helped to deepen the agency's impact in its first five years in ways that cannot be measured as easily as the number of cases closed or regulations issued. Heavy emphasis on compliance management systems, complaint response, and smooth implementation of regulations encourages financial services providers—both depository and non-depository alike—to internalize good practices and address concerns quickly as they emerge. The Bureau's partners are helping to ensure market intelligence and feedback flow to the agency and that Bureau materials and expertise reach more market players, consumer intermediaries, and consumers. The Bureau's technological and research resources are helping it monitor markets and leverage staff to maximum effect. Finally, Bureau reports, data, and analyses of conditions in various consumer financial services markets are providing quicker and more holistic views of risk to consumers and the country's financial services ecosystem on an ongoing basis. Although ensuring that all consumers have access to markets for consumer financial products and services that are “fair, transparent, and competitive” is an ongoing challenge in light of those markets' size, complexity, and continuing evolution,¹¹³ the Bureau has worked diligently to build out Dodd-Frank's blueprint to become an effective consolidated regulator.

111. See *The Home Mortgage Disclosure Act*, CONSUMER FIN. PROT. BUREAU, <http://www.consumerfinance.gov/data-research/hmda/> (last visited Feb. 7, 2017).

112. See CONSUMER FIN. PROT. BUREAU & FEDERAL HOUS. FIN. AGENCY, NATIONAL SURVEY OF MORTGAGE ORIGINATIONS: TECHNICAL REPORT 2.1 (Dec. 2016), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/NSMB_technical_documentation_2.1_122216.pdf.

113. Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) § 1021(a), 12 U.S.C. § 5511(a)(2015).